

EXHIBIT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JEFFREY KONYN,

Plaintiff,

v.

LAKE SUPERIOR AND ISHPEMING
RAILROAD COMPANY,

Defendant,

Case No: 2:11-cv-00051-GJQ

Hon. Gordon J. Quist

O'Bryan Baun Karamanian
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Plunkett Cooney
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**DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND RELIANCE ON JURY DEMAND**

Defendant Lake Superior and Ishpeming Railroad Company through its attorneys, Plunkett Cooney, answers Plaintiff's Complaint as follows:

1. Territorial jurisdiction and venue lie in this action: the incident of occurrence took place in this district at Defendant's dock.

ANSWER: Defendant lacks knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies those allegations.

2. Plaintiff is a citizen of the State of Wisconsin, Defendant is a Michigan corporation with a principal place of business in Michigan, and the amount in controversy exceeds Twenty Five (sic) Thousand (\$75,000) Dollars, giving rise to jurisdiction at law *vis-à-vis* diversity of citizenship, 28 USC 1332.

14. Plaintiff's claims may be barred by the exclusive remedy under Michigan's Worker's Compensation statute.

15. PURSUANT TO MCL 600.2957, DEFENDANT(S) GIVE NOTICE THAT THE FOLLOWING NON-PARTY MAY BE WHOLLY OR PARTIALLY AT FAULT IN THE ABOVE-CAPTIONED LITIGATION:

VanEnkevort Tug & Barge, Inc.
909 No. Lincoln Road
Escanaba, MI 49829
(906) 786-1717

Defendant provides this notice in accordance with Michigan law and to preserve its right to, among other things, present evidence regarding the non-party's fault and request the Court to instruct the jury to allocate fault to that non-party. Defendant reserves the right to identify other non-parties at fault as they become known through discovery.

16. Defendant reserves the right to file further and additional Affirmative Defenses as they become known throughout discovery.

RELIANCE UPON JURY DEMAND

Defendant Lake Superior and Ishpeming Railroad Company through its attorneys, Plunkett Cooney, relies upon the jury demand filed by Plaintiff.

Dated: August 31, 2011

/s/ Karl A. Weber
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